

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4304 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAMILKHAN SHERJADKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SJ DAVE, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/07/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 11/4/1997 rendered by the respondent no. 1 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been indulging in anti-social activities of threatening innocent persons and assaulting them and thus creating atmosphere of fear. The detaining authority has placed reliance upon two offences of 1997 registered in Gaekwad Haveli Police Station inter-alia under sections 336 & 341 of the Indian Penal Code. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of 12 witnesses have been relied upon. They speak about six incidents dated 12/3/97, 18/3/97, 15/3/1997, 24/3/1997, 29/3/1997 & 3/4/97 indicating beating of concerned witnesses in public resulting in fear in the mind of people.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a 'dangerous person' within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta,
C.P. reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras. 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. In reply, the learned A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v/s. State of Maharashtra and anr. reported in AIR 1992 SC 979. However, the ratio in Harpreet Kaur's decision (supra) can hardly have any application to the facts of the petitioner's case. I have gone through the papers concerning the registered offences and the facts of the case, which can hardly be said to have affected public order.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

8. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu - Jamilkhan Sherjadjkhan Pathan shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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